

REMARKS

In the Office Action dated October 4, 2004, claims 1-26 were presented for examination. The Examiner rejected claims 19-23 under 35 U.S.C. §112, second paragraph. In addition, claims 1-26 were rejected under 35 U.S.C. §103(a).

Applicant wishes to thank the Examiner for the careful and thorough review and action on the merits in this application. The following remarks are provided in support of the pending claims and responsive to the Office Action of October 4, 2004 for the pending application.

I. Rejection of Claims 19-23 under 35 U.S.C. §112, second paragraph

Claims 19-23 were rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. More specifically, the Examiner raised issues pertaining to the limitation of "an article comprising a computer-readable signal bearing medium" and the means plus function language in the claims. The term article is commonly used in claim language to support an article of manufacture. Similarly, "a computer-readable signal bearing medium" is commonly used in claim language to support an environment in which code and instructions associated with the code may be interpreted. As shown in the Specification, in one embodiment, the means for receiving a message from a remote administrator may be in the form of a dispatcher, and the means for launching a lower priority task may be in the form of an agent. In one embodiment, the agent and/or the dispatcher may be in the form of instructions embedded in a driver of a computer. Applicant believes that the claims are clear and definite in view of the explanation provided. Accordingly, Applicant respectfully requests the Examiner to remove the rejection under 35 U.S.C. §112, second paragraph, addressed to claims 19-23.

II. Rejection of claims 1-26 under 35 U.S.C. §103(a)

Claims 1-26 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Moore et*

al. (U.S. Patent Publication No. 2004/0133609) in view of *Logue et al.* (U.S. Patent No. 6,647,421).

The *Moore et al.* publication '609 relates to management of data across a network of distributed heterogeneous resources. *Moore et al.* employs a storage resource broker in conjunction with a meta-data catalog (MCAT) to store meta-data associated with resources managed by the storage resource broker. "Clients are provided with two sets of APIs, high level and low-level APIs. The high-level APIs handle data sets that access the MCAT server for meta-data management, while the low-level APIs handle data sets without using the MCAT." Page 4, paragraph 80. As noted by the Examiner, requests in *Moore et al.* originate from a remote server and not from the remote administrator, as claimed by Applicant.

The *Logue et al.* patent '421 relates to a method for dispatching a document request in a proxy. More specifically, the proxy supports efficient document caching in a client-server network. In one embodiment, the method is employed in a system that provides a user access to the Internet, and a hit accumulator server is provided to organize information pertaining to hits received for a specific web site. One of the elements provided in the hit accumulator server is a hit report processor. "[t]he hit report processor 450 may receive requests from remote site administrators. . . for hit reports. The hit reports can be extracted from the per site hit database 440 and transmitted to the requester in an HTML report, for example." Col. 6, lines 14-19. Accordingly, the hit report processor may receive a request from a remote site administrator.

Applicant's invention applies to spawning a low priority task from a higher priority task, as noted in the preamble of claims 1 and 25 and the body of claims 10 and 19. The process of launching the low priority task is in response to the message received from the remote administrator. Although the *Moore et al.* publication discloses a high level and a low level API, the request of *Moore et al.* can only originate from a remote server, not a remote administrator. Accordingly, *Moore et al.* is missing one of the elements of Applicant's claims.

In order to apply *Moore et al.* to Applicant's pending application, *Moore et al.* must be modified and reconfigured in order to support communication with a remote administrator, as claimed by Applicant. The Examiner's admission that *Moore et al.* does not teach communication with a remote administrator in relation to spawning a low priority task from a higher priority task in effect shows the limitation that is teaching away from Applicant's invention. Accordingly, *Moore et al.* fails to teach each and every element of Applicant's claimed invention.

The Examiner uses the *Logue et al.* patent to teach the missing element of *Moore et al.* However, the *Logue et al.* patent does not relate in any way to differentiating task priorities, as claimed by Applicant. In fact, the only portion of *Logue et al.* that may relate in any way to Applicant's claimed invention is the use of a remote administrator to communicate with a hit accumulator server to obtain hit information. However, *Logue et al.* is limited to support of this single element as claimed by Applicant. *Logue et al.* fails to account for Applicant's claimed launching of a lower priority task from a higher priority task, as *Logue et al.* is not related to spawning of tasks based upon a ranking. "Although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so.'" MPEP §2143.01 (citing *In re Mills*, 916 F.2d 680, 682, 16 USPQ 2d. 1430 (Fed. Cir. 1990)). "Both the suggestion and the reasonable expectation of success must be founded in the prior art, not in the Applicants' disclosure." *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438, 1442 (Fed. Cir. 1991). There is no suggestion found in *Logue et al.* for a modification to support a launch of a lower priority task from a higher priority task in response to communication with a remote administrator. Accordingly, there is no suggestion, teaching, or motivation in *Logue et al.* to launch a lower priority task from a higher priority task, as claimed by Applicant.

Furthermore, *Moore et al.* does not suggest a modification to accommodate communication with a remote administrator. To read *Moore et al.* as providing communication with a remote administrator would require a modification to the invention of *Moore et al.* not envisioned or required. The only suggestion for a system that utilizes both communication with

a remote administrator and launching of a lower priority task from a higher priority task in the manner claimed by Applicant is derived from Applicant's invention. Absent Applicant's invention, there is no suggestion or motivation within either *Moore et al.* or *Logue et al.* for such a modification. "It is impermissible to use the claimed invention as an instructions manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." *In re Fritch*, 972 F.2d 1260, 1266, 23 USPQ 2d 1780 (Fed. Cir. 1992) (citing *In re Gorman*, 933 F.2d 982, 987 (Fed. Cir. 1991)). Yet this is the very process that the Examiner has attempted to undertake. Accordingly, the combination of the prior art references is improper as the Examiner's combination is precipitated by utilizing Applicant's claimed invention as the template to make the modifications suggested by the Examiner — which by its very nature makes such a combination non-obvious.

With respect to claims 5, 6, 7, 15, 16, 17, 22, 23, and 25, there is no teaching or suggestion in either *Logue et al.* or *Moore et al.* to utilize a flag in association with communication. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP §2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). The Examiner admits that *Moore et al.* does not teach "the dispatcher sets the flag for signaling the receipt of the message." See First Office Action, Section 9, Page 4. In fact, neither *Moore et al.* nor *Logue et al.* teaches the use of a flag in association with communication with the dispatcher. Accordingly, since there is no teaching in the prior art for the flag as claimed by Applicant, Applicant respectfully requests the Examiner to remove the rejection of claims 5, 6, 7, 15, 16, 17, 22, 23, and 25.

Finally, when viewed in its entirety, Applicant's invention is greater than the sum of the parts. Utilizing the structure of the communication with a remote administrator in association with launching a lower priority task from a higher priority task provides enhanced operating efficiency. In this manner, it is not whether the individual components of the patent were obvious at the time of the invention, but whether the aggregation produced a new or different result. "A proper nonobviousness analysis judges the claimed invention holistically, not by cobbling together the teachings of different references to match different claim limitations in a

piecemeal fashion." Robert E. Schechter et al., *Intellectual Property Law of Copyrights, Patents and Trademarks*, §17.3 at 381 (2003). It is the unique structure of the Applicant's elements and how they function together that improves operating efficiency. Unlike either *Moore et al.* or *Logue et al.*, Applicant's invention launches a lower priority task from a higher priority task in association with communication with a remote administrator. The combination of these elements are not present or suggested in *Moore et al.* and *Logue et al.* for the obvious reasons stated above. Accordingly, the Applicant respectfully submits that claims 1-26 would not have been obvious in view of *Moore et al.* ('609) in view of *Logue et al.* ('421) and allowance of claims 1-26 is respectfully requested.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,

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